

CHARGE

DELIVERED TO THE

GRAND JURY,

AT THE

SESSIONS of the PEACE

HELD FOR THE

City and Liberty of *Westminster*, &c.

On THURSDAY the 29th of JUNE, 1749;

By *HENRY FIELDING*, Esq;

CHAIRMAN of the said SESSIONS.

PUBLISHED

By Order of the COURT, and at the unanimous
Request of the Gentlemen of the GRAND JURY,

L O N D O N:

Printed for A. MILLAR, opposite *Catharine Street*, in
the Strand. 1749.

City, Borough and
Town of West-
minster, in the
County of Mid-
dlesex,

At the General Quarter Session of the
Peace of our Lord the King, holden at
the Town Court-House near West-
minster-Hall, in and for the Liberty
of the Dean and Chapter of the Colle-
giate Church of St. Peter, Westmin-
ster, the City, Borough and Town of
Westminster, in the County of Mid-
dlesex, and St. Martin le Grand,
London, on Thursday the Twenty-
ninth Day of June, in the Twenty-
third Year of the Reign of our Sove-
reign Lord George the Second, King
of Great-Britain, &c. before Henry
Fielding, Esq; the Right Hon. - - -
George Lord Carpenter, Sir John
Crossle, Baronet, George Huddleston,
James Crofts, Gabriel Fowace,
John Upton, Thomas Ellys, Tho-
mas Smith, George Payne, William
Walmsley, William Young, Peter
Elers, Martin Clare, Thomas Le-
diard, Henry Trent, Daniel Gach,
James Frazer, Esquires, and others
their fellows, Justices of our said Lord
the King, assigned to keep the Peace in
the said Liberty, and also to hear and
determine divers Felonies, Trespasses,
and other Misdeeds done and committed
within the said Liberty.



HIS Majesty's Justices of the Peace for this City and Li-
berty of Westminster, now assembled at this General
Quarter Session of the Peace held for the said City and Liberty,
being of Opinion that the Charge this Day given by Henry Field-
ing, Esq; the Chairman of this Session, to the Grand Jury
sworn to inquire for our Sovereign Lord the King for the Body
of this City and Liberty, and to the High and Petty Constables
of the same, is a very loyal, learned, ingenious, excellent and
useful Charge, highly tending to the Service of his Majesty and
Administration and Government, have unanimously agreed and
resolved, That the Thanks of this Court be, and the same are
hereby given to the said Henry Fielding, Esq; for his said Charge.
And we do desire that he will be pleased to cause the same to be
printed and published, for the better Information of the Inha-
bitants and public Officers of this City and Liberty in the Per-
formance of their respective Duties.

By the Court.

F O R B E S.



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CHARGE

Delivered to the

GRAND JURY, &c.

Gentlemen of the Grand Jury,

THERE is no Part in all the excellent Frame of our Constitution which an *Englishman* can, I think, contemplate with such Delight and Admiration ; nothing which must fill him with such Gratitude to our earliest Ancestors, as that Branch of *British* Liberty from which, Gentlemen, you
B derive

your Authority of assembling
on this Day.

This Influence of Juris Gentium, is a Privilege which distinguishes the Liberty of *Englishmen* from those of all other Nations: For as we find no Traces of this in the Antiquities of the *Jews*, or *Greeks*, or *Romans*; so it is an Advantage, which is at present solely confined to this Country; not so much, I apprehend, from the Reasons assigned by FORTESCUS, in his Book *de Laudibus*, cap. 29. namely, *because there are more Husbandmen, and fewer Freeholders, in other Countries*; as because, other Countries have less of Freedom than this; and being for the most Part subjected to the absolute Wills of their Governors, hold their Lives, Liberties, and Properties at the Discretion of those Governors, and not under the Protection of certain Laws. In such Countries it would be absurd to look for any Share of Power in the Hands of the People,

AND

AND if Juries in general be so very
 signal a Blessing to this Nation, as
 FORTESCUE, in the Book I have just
 cited, thinks it : *A Method*, says he,
much more available and effectual for
the Trial of Truth, than is the Form of
any other Laws of the World, as it is far-
ther from the Danger of Corruption and
Subornation; what, Gentlemen, shall we
 say of the Institution of Grand Juries,
 by which an *Englishman*, so far from
 being convicted, cannot be even tried,
 not even put on his Trial in any Ca-
 pital Case, at the Suit of the Crown ;
 unless, perhaps, in one or two very spe-
 cial Instances, till Twelve Men at the
 least have said on their Oaths, that there
 is a probable Cause for his Accusa-
 tion ! Surely, we may in a kind of
 Rapture cry out with FORTESCUE,
 speaking of the Second Jury, *What*
then can unjustly die in England for
any criminal Offence, seeing he may
have so many Helps for the Favour of
 B 2 his

his Life, and that none may condemn
 him, but his Neighbours, good and law-
 ful Men, against whom he hath no
 Manner of Exception.

To trace the Original of this great
 and singular Privilege, or to say
 when and how it began, is not an
 easy Task; so obscure indeed are the
 Foot-steps of it through the first Ages
 of our History, that my Lord Hale,
 and even my Lord Coke, seem to have
 declined it. Nay, this latter in his
 Account of the Second or Petty Jury,
 is very succinct; and contents himself
 with saying, that it is very
 ancient and before the Con-
 quest.

Spelman in his Life of Alfred, lib.
 3. pag. 71. will have that Prince to
 have been the first Founder of Juries;
 but in Truth they are much older,
 and very probably had some Existence
 even among the Britons. The Nor-
 mans likewise had antiently the Bene-

fit of Juries, as appears in the *Customier de Normandy*; and something like Grand Juries too we find in that Book under the Title *Suit de Murdr.*

Bracton, who wrote in the Reign of HENRY the Third, in his Book *de Corona*, chap. 1. gives a plain Account of this Matter: And by him it appears, that the Grand Juries before the Justices in *Eyre*, differed very little at that time from what they now are, before Justices assigned to keep the Peace, Oyer, and Terminer, and Goal-Delivery, unless in the Manner of chusing them, and unless in one other Respect; there being then a Grand Jury, sworn for every Hundred; whereas at present one serves for the whole County, Liberty, &c.

BUT before this Time, our Ancestors were sensible of the great Importance of this Privilege, and extremely jealous of it, as appears by the 29th Chapter of the Great Charter,

ter, granted by King JOHN, and confirmed by HENRY the Third. For this my Lord Coke, 2. *Instit.* 46. expounds that Chapter. *Nullus liber homo capiatur*, &c. 'No Man shall be taken, that is (says he) restrained of Liberty, by Petition or Suggestion to the King and his Council; unless it be by Indictment or Presentment of good and lawful Men, where such Deeds be done.'

And so just a Value have our Ancestors always set on this great Branch of our Liberties, and so jealous have they been of any Attempt to diminish it, that when a Commission to punish Rioters in a summary Way, was awarded in the Second Year of RICHARD the Second, 'it was,' says Mr. *Lambard* in his *Eirenarcha*, fol. 305. 'even in the self-same Year of the same King, refused, as a Thing over-hard (says that Writer) to be borne, that a Freeman should be imprisoned without an Indictment, or other Trial, by his

his Peers, as *Magna Charta* speaketh;
 ' until that the Experience of greater
 ' Evils had prepared and made the
 ' Stomach of the Commonwealth able
 ' and fit to digest it.'

AND a hard Morfel surely it must
 have been, when the Commonwealth
 could not digest it in that turbulent
 Reign, which of all others in our His-
 tory, seems to have afforded the most
 proper Ingredients to make it palat-
 table; in a Reign moreover when the
 Commonwealth seemed to have been
 capable of swallowing and digesting
 almost any thing; when Judges were
 so prostitute as to acknowledge the
 King to be above the Law; and when
 a Parliament, which even *Edward* cen-
 sures, and for which *Mr. Rapin*,
 with a juster Indignation tells us, he
 knows no Name odious enough, made
 no scruple to sacrifice to the Pas-
 sions of the King, and his Ministers,
 the Lives of the most distinguished
 Lords of the Kingdom, as well as the

Liber-

Liberties and Privileges of the People. Even in that Reign, Gentlemen, our Ancestors could not, as Mr. *Lambard* remarks, be brought by any Necessity of the Times, to give up, in any single Instance, this their invaluable Privilege.

ANOTHER considerable Attempt to deprive the Subject of the Benefit of Grand Juries was made in the eleventh Year of HENRY the Seventh. The Pretence of this Act of Parliament, was the wilful Concealments of Grand Jurors, in their Inquests; and by it Power was given to the Justices of Assize in their Sessions, and to the Justices of Peace in every County, upon Information for the King, to hear and determine all Offences and Contempts (saving Treason, Murder or Felony) by any Person against the Effect of any Statute.

My Lord *Coke* in his 4th Institute fol. 40. sets forth this Act at large, not as a Law which in his time had

any

any Force, but *in Terrorē*; and, as he himself says, that the like should never be attempted in any future Parliament.

THIS Act, says Lord COKE, had a fair flattering Preamble; but in the Execution, tended diametrically contrary; viz. to the high Displeasure of Almighty GOD; and to the great Let, nay, the utter Subversion of the Common Law; namely, by depriving the Subject of that great Privilege of being indicted and tryed by a Jury of their Countrymen.

By Prefext of this Law, says the great Writer I have just cited, EMPSON and DUDLEY did commit upon the Subject insufferable Pressures and Oppressions. And we read in History, that soon after the Act took place, Sir WILLIAM CAPEL, Alderman of London, who was made the first Object of its Tyranny, was fined Two thousand seven hundred Pounds, Sixteen hundred

C dred

[116]
dred of, which he actually paid to the
King, by way of Composition. A vast
Sum in those Days, to be imposed for
a Crime so minute, that scarce any
Notice is taken of it in History.

Our Ancestors, however, bore not
long this Invasion on their Liberties;
for in the very first Year of K. HENRY
VIII. this flagitious Act was repealed,
and the Advisers of all the Extortions
committed by it were deservedly sacri-
ficed to the public Resentment.

GENTLEMEN, I shall mention but
two more Attacks on this most valuable
of all our Liberties; the first of which
was indeed the greatest of all, I mean
that cursed Court of Star-Chamber,
which was erected under the same King.

I shall not before you, Gentle-
men, enter into a Contest with my
Lord COKE, whether this Court had

a much older Existence, or whether it first began under the Statute of 3 HENRY VII. For my Part I clearly think the latter.

BECAUSE the Statute which creates it mentions no such Court as then existing, and most manifestly speaks the Language of Creation, not of Confirmation.

2. Because it was expressly understood by the Judges, within Five Years after the Statute was made, as appears by the Year-Books of 8 HENRY VII. Pasch. Fol. 13. Plac. 7.

LASTLY Because all our Historians and Law-writers before that Time are silent concerning any such Court; for as to the Records and Acts of Parliament cited by my Lord COKE, they are most evidently to be applied only to the King and Council, to whom, in old Time, Complaints were, in very extraordinary Cases, preferred.

THIS old Court, my Lord COKE him-
 self confesses, that very rarely; so rarely
 indeed, that there are no Traces
 left of its Proceedings, at least of any
 such as were afterwards had under the
 Authority of the Statute. Had this
 Court had an original Existence in the
 Constitution, I do not see why the
 great Lawyer is so severe against the
 before-mentioned Act of the 11th of
 HENRY VII. or how he can, with any
 Propriety, call the Liberty of being
 accused and tried only by Juries, the
 Birth-right of an *English* Subject.

THE other Instance was that of the
 High Commission Court, instituted by
 Parliament in the first Year of Queen
 ELIZABETH.

THIS Act likewise pretends to refer
 to an Authority in being. The Title of
 it is, An Act restoring to the Crown the
 antient Jurisdiction, &c. By which,
 saith Lord COKE, 4 Inst. 326. the

Nature

Nature of the Act doth appear; viz.
that it is an Act of Restitution.

AND hence the Court of Common-
Pleas, in the Reign of JAMES I. well
argued, that the Act being meant to
restore to the Crown the antient ec-
clesiastical Jurisdiction, the Commis-
sioners could derive no other Power
from it than before belonged to that
ecclesiastical Jurisdiction.

BUT however necessary, as my Lord
Coke says, this Act might
have been at its first Crea-^{4 Inst. 326.}
tion, or however the Intention of the
Legislature might have been to re-
strain it, either as to Time or Persons,
certain it is, that the Commissioners
extended its Jurisdiction in many Cases,
to the great Grievance of the Subject,
and to the depriving them of that Pri-
vilege which I have just mentioned to
be the Birth-right of an *Englishman*.

AND,

THE Uses made of these Courts, and particularly under that unhappy Prince CHARLES I need not be mentioned. They are but too well known. Let it suffice, that the Spirit of our Ancestors at last prevailed over these Invasions of their Liberties, and these Courts were forever abolished.

AND, Gentlemen, if we have just Reason to admire the great Bravery and Steadiness of those our Ancestors, in defeating all the Attempts of Tyranny against this excellent Branch of our Constitution, we shall have no less Reason, I apprehend, to extol that great Wisdom, which they have from time to time demonstrated, in well ordering and regulating their Juries; so as to preserve them as clear as possible from all Danger of Corruption. In this Light, Gentlemen, we ought to consider the several Laws by which the Morals, the Character, the Substance,

stance, and good Demeanor of Jurors are regulated. These Jurors, Gentlemen, must be good and lawful Men, of Reputation and Substance in their Country, chosen at the Nomination of neither Party, absolutely disinterested and indifferent in the Cause which they are to try. Upon the whole, the Excellence of our Constitution, and the great Wisdom of our Laws, which FORTESCUE, my Lord COKE, and many other great Writers, have so highly extolled, is in no one Instance so truly admirable as in this Institution of our Juries.

I HOPE, Gentlemen, I shall not be thought impertinent, in having taken up so much of your Time to shew you the great Dignity and Importance of that Office which you are now assembled here to execute; the Duties of which it is incumbent on me concisely to open to you; and this I shall endeavour in the best Manner I am able.

THE Duty, Gentlemen, of a Grand Juror, is to enquire of all Crimes and Misdemeanors whatsoever, which have been committed in the County or Liberty for which he serves as a Grand Juror, and which are anywise cognizable by the Court in which he is sworn to enquire.

AND this Enquiry is in a twofold Manner, by way of Indictment, and by way of Presentment.

WHICH two Words, Mr. LAMBARD, fol. 461. thus explains:

A PRESENTMENT, says he, I take to be a meer Determination of the Jurors themselves; and an Indictment is the Verdict of the Jurors, grounded upon the Accusation of a third Person: So that a Presentment is but a Declaration of the Jurors, without any Bill offered before; and an Indictment is their

their finding of a Bill of Accusation to be true.

THE usual Method of Charge hath been to run over the several Articles, or Heads of Crimes, which might possibly become subject to the Enquiry of the Grand Jury.

THIS we find in BRACTON, who writ so long ago as the Reign of HENRY III. was the Practice of the Justices in Eyre, l. 3. c. 1. And my Lord COKE says, 4 *Inst.* 183. That the Charge to be given at the Sessions of the Peace consisteth of two Parts; Laws Ecclesiastical for the Peace of the Church, and Laws Civil and Temporal for the Peace of the Land. And Mr. LAMBARD, in his *Eirenarcha*, gives the whole Form of the Charge at Length, in which he recapitulates every Article which was at that Time enquirable in the Sessions.

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BUT,

BUT, Gentlemen, I think I may be excused at present from taking up so much of your Time; for tho' we are assembled to exercise the Jurisdiction of a very antient and honourable Liberty, yet, as there is another Sessions of Justices within that County of which this Liberty is a Part, before whom Indictments for all Crimes of the deeper Dye are usually preferred, it seems rather to favour of Ostentation than Utility, to run over those Articles which in great Probability will not come before you.

AND indeed a perfect Knowledge of the Law in these Matters is not necessary to a Grand Juror; for in all Cases of Indictments, whether for a greater or lesser, a public or private Crime, the Business of a Grand Jury is only to attend to the Evidence for the King; and if on that Evidence there shall appear a probable Cause for the Accusation, they are to find the

the Bill true, without listening to any Circumstances of Defence, or to any Matter of Law.

AND therefore my Lord HALE, *vol.*
2. fol. 158. puts this Case. ' If *A.* be
 ' killed by *B.* so that the Person of the
 ' Slayer and Slain be certain; and a Bill
 ' of Murder be presented to the Grand
 ' Jury, regularly they ought to find
 ' the Bill for *Murder*, and not for *Man-*
 ' *slaughter*, or *Se defendendo*; because
 ' otherwise Offences may be smother-
 ' ed without due Trial; and when the
 ' Party comes on his Trial the whole
 ' Fact will be examined before the
 ' Court and the Petty Jury; for if a Man
 ' kills *B.* in his own Defence, or *Per*
 ' *Infortunium*, or possibly in executing
 ' the Process of Law upon an Assault
 ' made upon him, or in his own De-
 ' fence on the Highway, or in Defence
 ' of his House against those that come
 ' to rob him (in which three last Cases
 ' it is neither Felony nor Forfeiture, but
 ' upon Not Guilty pleaded he ought

to be acquitted) yet if the Grand Inquest find an *Ignoramus* upon the Bill, or find the Special Matter, whereby the Prisoner is dismissed and discharged, he may nevertheless be indicted for Murder seven Years after; whereas, if upon a proper Finding he had been acquitted, he could never afterwards be again arraigned without having the Plea of *Autresfois acquit*.

THIS Doctrine of the learned Chief Justice you will apply to whatever Case may come before you: for where ever you shall find probable Cause, upon the Oaths of the King's Witnesses, you will not discharge your Office without finding the Bill to be true, shewing no Regard to the Nature of the Crime, or the Degree of the Guilt; which are Matters proper for the Cognizance and Determination of the Court only.

H. P. C. I MUST not, however, omit,
 ii. 157. on the Authority of the last-
 men-

mentioned Judge, ' that if, upon the
 ' hearing the King's Evidence, or upon
 ' your own Knowledge of the Incredi-
 ' bility of the Witnesses you shall be dis-
 ' satisfied, you may then return the Bill
 ' *Ignoramus.*'

IT is true my Lord HALE confines
 this to Indictments for capital Offences;
 but I see no Reason why it may not
 be extended to any Indictment what-
 ever.

ONE Caution more occurs on this
 Head of Indictment; and it is the
 Duty of Secrecy. To have revealed
 the King's Counsel disclosed to the
 Grand Jurors was formerly taken to
 be Felony; nay, Justice SHARD, in the
 27th Year of the Book of Assises,
Placit. 63. doubted whether it was
 not Treason; and tho' at this Day the
 Law be not so severe, yet is this still a
 very great Misdemeanor, and fineable
 as such, and is moreover a manifest
 Breach of your Oath.

I COME

I come now, Gentlemen, to the Second Branch of your Duty, namely, that of presenting all Offences which shall come to your Knowledge.

AND this is much more painful, and of greater Difficulty than the former; for here you are obliged, without any direct Accusation, to inform yourselves as well as is possible of the Truth of the Fact, and in some measure likewise to be conversant of those Laws which subject Offences to your Presentment.

UPON this Head therefore I shall beg Leave to remind you of those Articles which seem to be most worthy of your Enquiry, at this Time; for indeed it would be useless and tedious to enumerate the whole Catalogue of Misdemeanours that are to be found in our Statutes; many of which, though still in Force, are, by the Changes of Times and Fashions, become antiquated,

tiquated, and of little Use, *Cessante
ratione Legis, cessat & ipsa Lex*;
and there are some accidental and
temporary Evils which at particu-
lar Seasons have, like an epidemic Di-
stemper, affected Society, but have
afterwards disappeared, or at least made
very faint Efforts to corrupt the pub-
lic Morals. The Laws made to sup-
press such, tho' very wholesome and
necessary at the Time of their Crea-
tion, become obsolete with the Evil
which occasioned them, and which
they were intended to cure. But,
Gentlemen, there are Evils of a more
durable Kind, which rather resemble
chronical than epidemic Diseases; and
which have so inveterated themselves
in the Blood of the Body Politic, that
they are perhaps never to be totally
eradicated. These it will be always
the Duty of the Magistrate to palliate
and keep down as much as possible.
And these, Gentlemen, are the Mis-
demeanors of which you are to pre-
sent

sent as many as come to your Knowledge.

AND first, Gentlemen, I will remind you of presenting all Offences committed immediately against the Divine Being; for tho' all Crimes do include in them some Degree of Sin, and may therefore be considered as Offences against the Almighty; yet there are some more directly levelled at his Honour, and which the Temporal Laws do punish as such.

AND, I. all blasphemous Expressions against any one of the Sacred Persons in the Trinity, are severely punishable by the Common Law; for, as my Lord HALE says, in *Taylor's Case*, I

VENT. 293. 'Such Kind
3 Keb. 607. 'of wicked blasphemous
621. S. C. 'Words are not only an
'Offence against GOD and Religion,
'but a Crime against the Laws, State,
'and Government;' and in that Case
the Defendant for Blasphemy, too
horrible

horrible indeed to be repeated, was sentenced to stand three Times in the Pillory, to pay a great Fine, and to find Security for his good Behaviour during Life.

IN like Manner, all scandalous and contemptuous Words spoken against our holy Religion, are by the Wisdom of the Common Law made liable to an Indictment; for 'Christianity' (says that excellent Chief-Justice, in the Case I have just cited) 'is Parcel of the Laws of *England*; therefore to reproach the Christian Religion is to speak in Subversion of the Law.' And to the same Purpose is *Attwood's Case*, in CRO. JAC. 421. where one was indicted before the Justices of Peace for saying, that the Religion now professed was a new Religion within fifty Years, &c. For as to the Doubt concerning the High Commissioners, started in that Case, and then, as it appears, over-ruled, that is now vanished.

Now are our Statutes silent concerning this dreadful Offence; particularly by 1 ELIZ. c. 2. *sect.* 9. a severe Punishment is enacted for any Person who shall in any Interludes, Plays, Songs, Rhimes, or by other open Words declare or speak any thing in derogation, depraving or despising the Book of Common-Prayer, &c.

MR. LAMBARD, I find, mentions this Act in his Charge, though the Execution of it be in the Counties confined to the Justices of *Oyer and Terminer* and of *Assize*; but the 22d *Sect.* of the Statute seems to give a clear Jurisdiction to this Court, at two of our Quarter-Sessions.

THE last Offence of this Kind which the wicked Tongue of Man can commit, is by profane Cursing and Swearing. This is a Sin expressly against the Law delivered by God himself

self to the *Jews*, and which is as expressly prohibited by our blessed Saviour in his Sermon on the Mount.

MANY Statutes have been made against this Offence; and by the last of these, which was enacted in the Nineteenth Year of the present King, every Day-labourer, common Soldier, common Sailor and common Seaman, forfeits One Shilling; Every other Person under the Degree of a Gentleman, Two Shillings; and every Person of or above that Degree, Five Shillings.

AND in case any Person shall after such Conviction offend again, he forfeits double; and for every Offence after a second Conviction, treble.

THOUGH the Execution of this Act be entrusted to one single Magistrate, and no Jurisdiction, unless by Appeal, given to the Sessions; yet I could not forbear mentioning it here, when I am speaking in the Presence of many

Peace-Officers, who are to forfeit 40 Shillings for neglecting to put the Act in Execution. And I mention it the rather to inform them, that whenever the Offender is unknown to any Constable, Petty Constable, Tithingman, or other Peace-Officer, such Constable, &c. is empowered by the Act, without any Warrant, to seize and detain any such Person, and forthwith to carry him before the next Magistrate.

AND if these Officers would faithfully discharge the Duty thus enjoined them, and which Religion as well as the Law requires of them, our Streets would soon cease to resound with this detestable Crime, so injurious to the Honour of God, so directly repugnant to his positive Commands, so highly offensive to the Ears of all good Men, and so very scandalous to the Nation in the Ears of Foreigners.

HAVING dispatched those Misde-
meanors (the principal ones at least) which

which are immediately committed against God; I come now to speak of those which are committed against the Person of the King, which Person the Law wisely holds to be sacred.

BESIDES those heinous Offences against this sacred Person which are punished *ultimo supplicio*, there are many Articles, some of which involve the Criminal in the Guilt of Premunire, and others are considered in Law as Misprisions or Contempts. The former of these is by Mr. Serjeant HAWKINS, in his Pleas of the Crown, divided into two general Heads: *Viz.*

1. Into Offences against the Crown.

2. And Offences against the Authority of the King and Parliament.

UNDER the former Head he enumerates nine several Articles; but as these chiefly relate to such Invasions of the Royal

Royal Prerogative as were either made in popish Ages in favour of the Bishops of *Rome*, or in those Times which bordered on the Reformation in favour of the Church of *Rome*, and are not practised, at least not openly practised in these Days, I shall have no Need to repeat them here.

UNDER the latter Head he mentions only one, which was enacted in the Reign of Queen ANNE, 6 *Ann.* c. 7. If any Person shall maliciously and directly, by Preaching, Teaching, or advised Speaking, declare, maintain and affirm, that the pretended Prince of *Wales* hath any Right or Title to the Crown of these Realms, or that any other Person or Persons hath or have any Right or Title to the same, otherwise than according to the Acts of Settlement ; or that the Kings or Queens of this Realm, with the Authority of Parliament, are not able to make Laws to limit the Crown and

the
Royal

the Descent, &c. thereof, shall incur a Præmunire.

A most wholesome and necessary Law. And yet so mild hath been our Government, that I remember no one Instance of putting it in Execution.

MISPRISIONS or Contempts are against the King's Prerogative, against his Title, or against his sacred Person or Government.

UNDER these Heads will fall any Act of public and avowed Disobedience; any denying his most just and lawful Title to the Crown; any overt Act which directly tends to encourage or promote Rebellion or Sedition; all false Rumours against his Majesty, or his Councils; all contemptuous Language concerning his sacred Person, by cursing, reviling him, &c. or by uttering any thing which manifests an Intention of lessening that Esteem, Awe and Reverence

verence which Subjects ought to bear
to the best of Princes.

These are Offences, Gentlemen,
which I must earnestly recommend to
your Enquiry. This, Gentlemen, is
your Duty as Grand Jurors; and it
must be a most pleasing Task to you,
as you are *Englishmen*; for in Pro-
portion as you love and esteem your
Liberties, you will be fired with Love
and Reverence toward a Prince, under
whose Administration you enjoy them
in the fullest and amplest Manner.

Believe me, Gentlemen, notwith-
standing all which the Malice of the
Disappointed, the Madness of Repub-
licans, or the Folly of Jacobites may
insinuate, there is but one Method to
maintain the Liberties of this Coun-
try, and that is, to maintain the Crown
on the Heads of that Family which
now happily enjoys it.

VERENCE

IF

If ever Subjects had Reason to admire the Justice of that Sentiment of the Poet *Cludian*, *That Liberty never flourishes so happily as under a good King*, we have Reason at present for that Admiration.

I AM afraid, Gentlemen, this Word *Liberty*, though so much talked of, is but little understood. What other Idea can we have of Liberty, than that it is the Enjoyment of our Lives, our Persons, and our Properties in Security; to be free Masters of ourselves and our Possessions, as far as the known Laws of our Country will admit; to be liable to no Punishment, no Confinement, no Loss but what those Laws subject us to! Is there any Man ignorant enough to deny that this is the Description of a free People; or base enough to accuse me of Panegyric, when I say this is our present happy Condition?

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BUT

BUT if the Blessing of Liberty, like that of Health, be not to be perceived by those who enjoy it, or at least must be illustrated by its Opposite, let us compare our own Condition with that of other Countries; of those whose Polity some among us pretend so much to admire, and whose Government they seem so ardently to affect. *Lettres de Cachet*, Bastiles, and Inquisitions, may, perhaps, give us a livelier Sense of a just and mild Administration, than any of the Blessings we enjoy under it.

AGAIN, Gentlemen, let us compare the present Times with the past. And here I need not resort back to those distant Ages, when our unhappy Forefathers petitioned their Conqueror *that he would not make them so miserable, nor be so severe to them, as to judge them by a Law they understood not.* These are the very Words, as we find them preserved in *Daniel*; in Return to which,

which, the Historian informs us, nothing was obtain'd but fair Promises. I shall not dwell here on the Tyranny of his immediate Successor, of whom the same Historian records, that 'seeking to establish absolute Power by Force, he made both himself and his People miserable.'

I NEED not, Gentlemen, here remind you of the Oppressions under which our Ancestors have groaned in many other Reigns, to shake off which the Sword of Civil War was first drawn in the Reign of King *John*, which was not entirely sheathed during many successive Generations.

I MIGHT, perhaps, have a fairer Title to your Patience, in laying open the tyrannical Proceedings of later Times, while the Crown was possessed by four successive Princes of the House of *Stuart*. But this, Gentlemen, would be to trespass on your Patience indeed: For to mention all their Acts

of absolute Power, all their Attempts to subvert the Liberties of this Nation, would be to relate to you the History of their Reigns.

IN a Word, Gentlemen, all the Struggles which our Ancestors have so bravely maintained with ambitious Princes, and particularly with the last mentioned Family, was to maintain and preserve to themselves and their Posterity, that very Liberty which we now enjoy, under a Prince to whom I may truly apply what the Philosopher long ago said of Virtue, THAT ALL WHO TRULY KNOW HIM MUST LOVE HIM.

THE third general Head of Misdemeanours, Gentlemen, is of those which are committed against the Subject, and these may be divided into two Branches.

INTO such as are committed against Individuals only:

AND

AND into such as affect the Public in general.

THE former of these will probably come before you by Way of Indictment; for Men are apt enough to revenge their own Quarrels; but Offences in *commune notummentum* do not so certainly find an Avenger; and thus those Crimes, which it is the Duty of every Man to punish, do often escape with Impunity.

Of these, Gentlemen, it may be therefore proper to awaken your Enquiry, and particularly of such as do in a more especial Manner infect the Public at this Time.

THE first of this Kind is the Offence of profligate Lewdness; a Crime of a very pernicious Nature to Society, as it tends to corrupt the Morals of our Youth, and is expressly prohibited by the Law of God, under

Denunciation of the severest Judgment, in the New Testament. Nay, we read in the 25th Chapter of *Numbers* the exceeding Wrath of God against the Children of *Israel* for their Fornication with the Daughters of *Moad*. Nor did the Plague which on that Occasion was sent among them, and which destroyed Four and twenty thousand, cease, till *Phineas*, the Son of *Eleazar* and Grandson of *Aaron*, had slain the *Israelite* together with his Harlot.

AND this, Gentlemen, though a spiritual Offence, and of a very high Nature too, as appears from what I have mentioned, is likewise a temporal Crime, and, as Mr. LAMBARD (122) says, against the Peace.

My Lord COKE, in his third *Institute*, 206, tells us, that in antient Times Adultery and Fornication were punished by Fine and Imprisonment, and were enquirable in Turns and Leets.

And

And in the Year-Book of *11 Ed. 7. fol. 6.*
Henry VII. we find the *plac. 3.*
 Custom of *London* pleaded for a Con-
 stable to seize a Woman taken in the
 Act of Adultery, and to carry her to
 Prison.

AND though later Times have given
 up this Matter in general to ecclesi-
 astical Jurisdiction, yet there are two
 Species which remain at this Day
 cognizable by the Common Law.

THE first is, any open Act of
 Lewdness and Indecency in public, to
 the Scandal of Good-manners.

AND therefore in *Michaelmas* Term,
15 Car. 2. B. R. Sir CHARLES SIDNEY
 was indicted for having exposed him-
 self naked in a Balcony in *Covent-*
Garden, to a great Multitude of Peo-
 ple, with many indecent Words and
 Actions; and this was laid to be con-
 trary to the King's Peace, and to the
 great Scandal of Christianity. He
 confessed the Indictment, and SIDER-

FIN,

Mr. P. R. K. who reports the Case, tells us, that the Court, in Consideration of his embarrassed Fortune, fined him only 2000 Marks, with a short Imprisonment, and to be bound three Years to his good Behaviour. An infamous Punishment for a Gentleman, but far less infamous than the Offence. If any Facts of this Nature shall come to your Knowledge, you will, I make no Doubt, present them, without any Respect to Persons. Sex or Quantity may render the Crime more atrocious, and the Example more pernicious; but can give no Sanction to such infamous Offences, nor will, I hope, ever give Impunity.

The second Species which falls under this Head, is the Crime of keeping a Brothel or Bawdy-House. This is a kind of common Nuisance, and is punishable by the Common Law.

It is true, that certain Houses of this Kind, under the Name of public

the Stews, have been sometimes tolerated in Christian Countries, to the great Scandal of our Religion, and in direct Contradiction to its positive Precepts: But in the thirty-seventh Year of HENRY the Eight, they were all suppressed by Proclamation. And those infamous Women who inhabited them were not, says Lord Coke, either buried in Christian Burial when they were dead, nor permitted to receive the Rites of the Church while they lived.

AND, Gentlemen, notwithstanding the Favour which the Law in many Cases extends to married Women, yet in this Case the Wife is equally indictable, and may be found guilty with her Husband.

NOR is it necessary that the Person be Master or Mistress of the whole House; for if he or she have only a single Room, and will therewith accommodate lewd People to perpetrate

Acts of Uncleaness, they may be indicted for keeping a Bawdy-House: And this was the Resolution of the whole Court, in the *Queen and PEIRSON*. SALK. 382.

NOR is the Guilt confined to those who keep such Houses: those who frequent them are no less liable to the Censure of this Law. Accordingly we find, in the select Cases printed at the End of Lord Ch. J. PARHAM'S *Reports*, that a Man was indicted in the Beginning of the Reign of CHARLES the First, at the Sessions of the Peace for the Town of *Northampton*, for frequenting a suspected Bawdy-House. And the Indictment being removed into the *King's-Bench*, several Objections were taken to it, which were all over-ruled, Judgment was given upon it, and the Defendant fined.

If you shall know, therefore, Gentlemen, of any such Crimes, it will be

be your Duty to present them to the Court.

For however lightly this Offence may be thought or spoken of by idle and dissolute Persons, it is a Matter of serious and weighty Consideration. It is the Cause, says my Lord Coke, of many Mischiefs, the fairest End whereof is Beggary; and tends directly to the Overthrow of Men's Bodies, to the wasting of their Livelihoods, and to the indangering of their Souls.

To eradicate this Vice out of Society, however it may be the Wish of sober and good Men, is, perhaps, an impossible Attempt; but to check its Progress, and to suppress the open and more profligate Practice of it, is within the Power of the Magistrate, and it is his Duty. And this is more immediately incumbent upon us, in an Age when Brothels are become in a Manner the Seminaries of Education, and that especially of those Youths,

whose Birth makes their right Institution of the utmost Consequence to the future Well-being of the Public: For whatever may be the Education of these Youths, however vitiated and enervated their Minds and Bodies may be with Vices and Diseases, they are born to be the Governors of our Posterity. If, therefore, through the egregious Folly of their Parents, this Town is to be the School of such Youths, it behoves us, Gentlemen, to take as much Care as possible to correct the Morals of that School.

AND, Gentlemen, there are other Houses, rather less scandalous, perhaps, but equally dangerous to the Society: In which Houses the Manners of Youth are greatly tainted and corrupted. These are those Places of public Rendezvous where idle Persons of both Sexes meet in a very disorderly Manner, often at improper Hours, and sometimes in disguised Habits. These Houses which pretend to be the Scenes

Scenes of innocent Diversion and Amusement, are in Reality the Temple of Iniquity. Such Meetings are *contra bonam mores*; they are considered in Law in the Nature of a Nuisance, and as such, the Keepers and Maintainers of them may be presented and punished.

THERE is great Difference, Gentlemen, between a morose and oversanctified Spirit, which excludes all Kind of Diversion; and a profligate Disposition which hurries us into the most vicious Excesses of this Kind. 'The Common Law,' says Mr. Pulton in his excellent Treatise *de Pace*, fol. 25. b. 'allows many Recreations, which be not with Intent to break or disturb the Peace, or to offer Violence, Force, or Hurt to the Person of any; but either to try Activity, or to increase Society, Amity, and neighbourly Friendship.' He there enumerates many sorts of innocent Diversions of the rural Kind, and

which for the most Part belong to the lower Sort of People. For the upper Part of Mankind, and in this Town, there are many lawful Amusements, abundantly sufficient for the Recreation of any temperate and sober Mind. But, Gentlemen, so immoderate are the Desires of many, so hungry is their Appetite for Pleasure, that they may be said to have a Fury after it; and Diversion is no longer the Recreation or Amusement, but the whole Business of their Lives. They are not content with three Theatres, they must have a fourth; where the Exhibitions are not only contrary to Law, but contrary to Good-Manners, and where the Stage is reduced back again to that Degree of Licentiousness which was too enormous for the corrupt State of *Athens* to tolerate; and which, as the *Roman* Poet, rather, I think, in the Spirit of a Cenfor than a Satyr-ist, tells us, those *Athenians*, who were not themselves abused, took Care to

to abolish, from their Concern for the
Public.

GENTLEMEN, our News-Papers,
from the Top of the Page to the
Bottom, the Corners of our Streets up
to the very Eves of our Houses, pre-
sent us with nothing but a View of
Masquerades, Balls, and Assemblies
of various Kinds, Fairs, Wells, Gar-
dens, &c. tending to promote Idleness,
Extravagance and Immorality, among
all Sorts of People.

THIS Fury after licentious and lu-
xurious Pleasures is grown to so enor-
mous a Height, that it may be call-
ed the Characteristic of the present
Age. And it is an Evil, Gentlemen,
of which it is neither easy nor plea-
sant to foresee all the Consequences.
Many of them, however, are obvious;
and these are so dreadful, that they
will, I doubt not, induce you to use
your best Endeavours to check the
further Encrease of this growing Mis-
chief;

and, for the Red of the Law, Gentlemen, must restrain those within the Bounds of Decency and Sobriety, who are deaf to the Voice of Reason, and superior to the Fear of Shame.

GENTLEMEN, there are another Sort of these Temples of Iniquity, and these are Gaming-Houses. This Vice, Gentlemen, is inseparable from a luxurious and idle Age; for while Luxury produces Want, Idleness forbids honest Labour to supply it. All such Houses are Nuisances in the Eye of the Common Law; and severe Punishments, as well on those who keep them, as on those who frequent and play at them, are inflicted by many Statutes. Of these Houses, Gentlemen, you will, I doubt not, enquire with great Diligence; for though possibly there may be some Offenders out of your Reach, yet if those within it be well and strictly prosecuted, it may, perhaps, in Time have some Effect on the others. Example in this Case may,

contrary

contrary to its general Course, move upwards ; and Men may become ashamed of offending against those Laws with Impunity, by which they see their Inferiors brought to Punishment. But if this Effect should not be produced, yet, Gentlemen, there is no Reason why you should not exert your Duty as far as you are able, because you cannot extend it as far as you desire. And to say the Truth, to prevent Gaming among the lower Sort of People is principally the Business of Society ; and for this plain Reason, because they are the most useful Members of the Society ; which by such Means will lose the Benefit of their Labour. As for the Rich and Great, the Consequence is generally no other than the Exchange of Property from the Hands of a Fool into those of a Sharper, who is, perhaps, the more worthy of the two to enjoy it.

I will mention only one Article more, and that of a very high Nature

H

ture

ture indeed. It is, Gentlemen, the
 Offence of Libelling, which is punish-
 ed by the Common Law, as it tends
 immediately to Quarrels and Breaches
 of the Peace, and very often to Blood-
 shed and Murder itself.

THE Punishment of this Offence,
 saith my Lord Coke, is Fine or Im-
 prisonment; and if the Case be exor-
 bitant, by Pillory and Loss of Ears.

AND, Gentlemen, even the last of
 these Judgments will appear extremely
 mild, if we consider in the first Place
 the atrocious Temper of Mind from
 which this proceeds.

Mr. PULTON, in the Beginning of
 his *Treatise de Pace*, says of a Libel-
 ler, 'that he is a secret Canker, which
 'concealeth his Name, hideth himself
 'in a Corner, and privily stingeth his
 'Neighbour in his Fame, Reputation,
 'and Credit; who neither knows from
 'whom, nor for what Cause he receiv-
 'eth

eth his Blows, nor hath any Means
to defend himself: And my Lord
COKE, in his 5th Report (125) com-
pares him to a Poisoner, who is the
meanest, the vilest, and most dangerous
of all Murderers. Nor can I help re-
peating to you a most beautiful Pas-
sage in the great Orator DEMOSTHE-
NES, who compares this Wretch to a
Viper, which Men ought to crush
where-ever they find him, without
staying till he bite them.

IN the second Place, if we consider
the Injury done by these Libellers, it
must raise the Indignation of every
honest and good Man: For what is
this, but, as Mr. PULTON says, 'a Note
' of Infamy, intended to defame the
' Person at whom it is levelled, to tread
' his Honour and Estimation in the
' Dust, to extirpate and root out his
' Reputation from the Face of the
' Earth, to make him a Scorn to his
' Enemies, and to be derided and de-
' spised by his Neighbours.'

It, Praise, and Honour, and Reputation, be so highly esteemed by the greatest and best of Men, that they are often the only Rewards which they propose to themselves from the noblest Actions: If there be nothing too difficult, too dangerous, or too disagreeable for Men to encounter, in order to acquire and preserve these Rewards; what a Degree of Wickedness and Barbarity must it be unjustly and wantonly to strip Men of that on which they place so high a Value.

NOR is Reputation to be considered as a chimerical Good, or as merely the Food of Vanity and Ambition. Our worldly Interests are closely connected with our Fame: By losing this, we are deprived of the chief Comforts of Society, particularly of that which is most dear to us, the Friendship and Love of all good and virtuous Men. Nay, the Common Law indulged so great a Privilege to Men of good Reputation in their Neighbourhood, that in many Actions

Actions the Defendant's Word was taken in his own Cause, if he could bring a certain Number of his Neighbours to vouch that they believed him.

On the contrary, whoever robs us of our good Name, doth not only expose us to public Contempt and Avoidance, but even to Punishment: For by the Statute 34 Edw. III. c. 1. the Justices of the Peace are empowered and directed to bind all such as be not of good Fame to their good Behaviour, and if they cannot find sufficient Sureties, they may be committed to Prison.

SEEING, therefore, the execrable Mischiefs perpetrated by this secret Canker, this Viper, this Poisoner, in Society, we shall not wonder to hear him so severely condemned in Scripture; nor that ARISTOTLE in his Politics should mention Slander as one of those great Evils which it is difficult for a Legislator to guard against; that the *Athenians* punished it with a very severe and

and Heavy Fine, and the Romans with
Death.

But tho' the Libeller or private
Persons be so detestable a Vermin, yet
is the Offence still capable of Aggra-
vation, when the Poison is scattered
upon public Persons and Magistrates.
All such Reflections are, as my Lord
Coxe observes, a Scandal on the Go-
vernment itself: And such Scandal
tends not only to the Breach of the
Peace, but to raise Seditions and In-
furrections among the whole Body of
the People.


And, Gentlemen, the higher and
greater the Magistrates be against whom
such Slanders are propagated; the grea-
ter is the Danger to the Society; and
such we find to have been the Sense
of the Legislature in the 2d Year of
R. 2. For in the Statute of that Year,
chap. 5. it is said, that by such Means
Discords may arise between the Lords
and Commons, whereof great Peril
and

and Mischief might come to all the Realm, and quick Subversion and Destruction of the said Realm.' And of such Consequence was this apprehended to be, that we find no less than four Statutes to prohibit and punish it; viz. *Westm.* 1. c. 33. 2 *R.* 2. c. 5. 12 *R.* 2. c. 11. and 2 and 3 *P. & M.* c. 12. By this last Statute a Jurisdiction was given to the Justices of Peace to enquire of all such Offences; and if it was by Book, Ballad, Letter or Writing, the Offender's Right-hand was to be stricken off for the first Offence, and for the second he was to incur a Præmunire.

This last Statute was afterwards prolonged in the last Year of Q. MARY, and in the first of ELIZABETH; during the Life of that Princess, and of the Heirs of her Body.

I HAVE mentioned these Laws to you, Gentlemen, to shew you the Sense of our Ancestors of a Crime which

which, I believe, they never saw carried to so flagitious a Height as it is at present; when, to the Shame of the Age, be it spoken, there are Men who make a Livelihood of Scandal. Most of these are Persons of the lowest Rank and Education, Men who daily declining the Labour to which they were born and bred, save the Sweat of their Brows at the Expence of their Consciences; and in order to get a little better Livelihood, are content to get it, perhaps, in a less painful, but in a baser Way than the meanest Mechanic.



Or these, Gentlemen, it is your Business to enquire; of the Devils, of the Writers, of the Printers, and of the Publishers of all such Libels; and I do heartily recommend this Enquiry to your Care,

To conclude, Gentlemen, you will consider yourselves as now summoned to the Execution of an Office, of the utmost

utmost Importance to the well-being
 of this Community: Nor will you, I
 am confident, suffer that Establishment,
 so wisely and carefully regulated, and
 so stoutly and zealously maintained
 by your wise and brave Ancestors, to
 degenerate into mere Form and Sha-
 dow. Grand Juries, Gentlemen, are
 in Reality the only Censors of this Na-
 tion. As such, the Manners of the
 People are in your Hands, and in yours
 only. You, therefore, are the only
 Correctors of them. If you neglect
 your Duty, the certain Consequences
 to the Public are too apparent: For as
 in a Garden, however well cultivated at
 first, if the Weeder's Care be omitted, the
 Whole must in Time be over-run with
 Weeds, and will resemble the Wildness
 and Rudeness of a Desert; so if those
 Immoralities of the People, which will
 sprout up in the best Constitution, be not
 from Time to Time corrected by the
 Hand of Justice, they will at length
 grow up to the most enormous Vices,
 will overspread the whole Nation, and

...to the Council Office, ...
...you are called to, ...
...Confession. To procure ...
...Vigilance, you are obliged by
the Duty you owe both to God and
to your Country. You are invested
with full Power for the Purpose. This
you have promised to do, under the
... of ... and you
... I don't ... with a Dis-
position and Resolution to perform it,
with that Zeal which I have en-
deavoured to recommend, and which the
... of the Age so
strongly requires.

E J N I S